

DIVISION C2

ADDITIONAL GENERAL CONDITIONS

Correction of nonconformities or refunds of the amounts paid in the manner and for the time provided above, shall be IPSC's exclusive remedy and shall constitute fulfillment of all liabilities of ALSTOM and its subcontractors and affiliates (including any liability for direct, indirect, special, incidental, or consequential damage) whether in warranty, contract, negligence, tort, strict liability, or otherwise with respect to any nonconformance of or nonconformity or deficiency in the Work supplied.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE AND RESULTS, WRITTEN, ORAL, OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY WARRANTY OR RESULTS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY ALSTOM AND ALL EQUIPMENT MANUFACTURERS.

2. Payment: Payment will be made within thirty (30) calendar days after delivery and receipt of the invoice. Payment shall occur as specified within the bid payment schedule submitted and identified in this Division, Page C2-2, Section 3, Supply and Installation of Equipment on a Fixed Price Basis.

Overdue payments are subject to a late charge, calculated from the date of invoice to the date of payment, equal to the lesser of 1.5 percent per month or the highest applicable rate allowed by law.

In the event IPSC fails to make any payment within thirty (30) calendar days of the date of any invoice becoming due and payable, ALSTOM shall be entitled to give written notice to IPSC requiring payment. If IPSC fails, without valid cause under the terms of the Contract, to make payment within fourteen (14) calendar days of receipt of such notice, then ALSTOM shall be entitled to suspend performance of the Work and to obtain an extension of time and costs as a result of such.

Progress payments will be made in accordance with the payment schedule detailed in Section 3 below. IPSC will make payments by wire transfer within thirty (30) days after receipt of invoice or achievement of the applicable payment extent specified.

3. Supply and Installation of Equipment on a Fixed Price Basis: ALSTOM proposes that the following payment points shall apply to the HP Turbine Replacement Contract.

- ^{Paid} Both u1 & 2 a. ✓ First Payment: Twenty (20) percent of each unit contract price payable within one (1) month of ordering the HP rotor forging. 5/2/01
- ^{Paid} u2 b. Second Payment: Further twenty (20) percent of each unit contract price payable within one (1) month of certification of commencement of rotor machining. ✓

J

DIVISION C2

ADDITIONAL GENERAL CONDITIONS

- PAID**
u2
- c. Third Payment: Further twenty (20) percent of each unit contract price payable within one (1) month of certification of completion of fitting blades to the rotor.
- PAID**
u2
- d. Fourth Payment: Further twenty (20) percent of each unit contract price payable within one (1) month of certification of completion of rotor balancing and trial build.
- PAID**
4/6/02
- e. Fifth Payment: Ten (10) percent of each unit contract value payable within one (1) month of receipt of the equipment at the Intermountain plant.
- f. Sixth Payment: Ten (10) percent of each unit contract price payable within two (2) months of initial resynchronization of the unit following retrofit installation.
4. Taxes: ALSTOM prices do not include any federal, state or local property, privilege, sales, service, use, excise, value added, or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon or with respect to this transaction, the property, its purchase, sale, replacement value or use, or any services performed in connection therewith. IPSC agrees to pay or reimburse ALSTOM, its subcontractors or suppliers, for any such taxes which ALSTOM, its subcontractors or suppliers are required to pay, collect, or withhold. Such taxes shall be shown as a separate line item on ALSTOM's invoices.
- Notwithstanding the above, ALSTOM shall arrange for goods to clear customs formalities and pay customs duties and charges in accordance with the delivery term DDP Jobsite (as specified by Incoterms 1990).
- Transfer of title to goods shall pass upon delivery to the IPSC job site.
5. Regulations, Permits, Licenses, and Warrants: ALSTOM shall comply with all applicable federal, state, and local laws and regulations including, but not limited to, Federal and State OSHA, as said regulations relate to this Contract. In addition, ALSTOM shall ensure that all permits, licenses, and warrants required in ALSTOM's name and relating to the Contract be acquired.
- J

DIVISION D1

SPECIAL CONDITIONS

6. Safety: ALSTOM agrees that it is familiar with the risks of injury associated with the Work, has reviewed the Work to be performed and the job site with an IPSC representative, and determined that no unusual or peculiar risk of harm exists with regard to the Work to be performed at the job site.
7. Material Safety Data Sheets: ALSTOM shall furnish a Material Safety Data Sheet (MSDS) for all hazardous materials furnished under this Contract. The MSDS shall be furnished to IPSC on, or prior to, the date of the first delivery of the materials or equipment.

If the specifications require that ALSTOM furnish instruction books, the MSDS's shall also be included in such books.

8. Liquidated Damages/Incentives: In the event ALSTOM fails to complete performance of its obligations by the date specified in this Section and such delay is attributable to ALSTOM and not due to a fault of IPSC or others under IPSC's control nor to reasons beyond ALSTOM's reasonable control (i.e., Force Majeure Events), then ALSTOM shall pay to IPSC liquidated damages in accordance with this Section, up to the liquidated damages limit of liability specified in Section 13 of this Division.

2nd ALSTOM guarantees the performance of the Work when tested in accordance with the conditions specified in this Section. Performance testing shall be conducted as soon as practicable after initial synchronization, but not later than eight (8) weeks after initial electrical synchronization. Degradation allowances shall be applied in accordance with Division D2, Technical Requirements, Page D2-9, Section 14. In the event of a shortfall in achievement of such performance guarantees, when the Work is tested by IPSC in accordance with the Proposal, and such shortfall is attributable to ALSTOM and not due to a fault of IPSC or others under IPSC's control and not due to reasons beyond ALSTOM's reasonable control, then ALSTOM shall pay to IPSC liquidated damages in accordance with this Section up to the aggregate liquidated damages limit of liability specified therein.

3rd Prior to paying liquidated damages for shortfall in performance, ALSTOM shall be entitled to a reasonable opportunity to adjust the Work and to have it retested. The measured performance of the Work shall be adjusted to account for deviations from the testing conditions specified in the Proposal before calculating ALSTOM's liquidated damages liability and any discrepancy between the measured performance and guaranteed performance shall be reduced by the applicable testing tolerance.

4th The payment of liquidated damages by ALSTOM to IPSC under the Contract shall be IPSC's sole remedy in full and final satisfaction of ALSTOM's liability for any delay or shortfall in guaranteed performance of the Work.

DIVISION D1

SPECIAL CONDITIONS

SM For each complete 0.1 percent shortfall in HP section efficiency below 92.2 percent (corrected for actual operating conditions), ALSTOM will pay \$75,000 (this value equates to slightly over \$250,000 per MW shortfall caused by efficiency shortfall). A testing tolerance equal to the mutually agreed measurement uncertainty shall be applied to a measured HP efficiency (corrected for actual operating conditions) taking into full consideration all test instrumentation prior to assessing liquidated damages.

6M ALSTOM shall be awarded a cash incentive of \$15,000 for each complete 0.1 percent in performance that is confirmed by the performance test results above 92.2 percent (corrected for actual operating conditions), up to a maximum performance cash incentive of \$200,000. No testing tolerance shall be applied above 92.2 percent (corrected for actual operating conditions), prior to calculating the performance incentive.

7M > For each complete 0.1 percent main steam flow in excess of 6.975 Mlb/h ALSTOM will pay \$15,000. (This value is derived on the basis that the power loss due to operation at reduced pressure if the turbine is made oversized by 0.1 percent is only one-fifth of the power loss due to flow restriction if the turbine is made undersized by the same amount).

- a. Delivery Schedule and Incentives: For delivery after March 1, 2002 for Unit 2 or after February 28, 2003 for Unit 1, liquidated damages of \$200,000 will be applied.

For delivery of the HP section to the site two (2) weeks ahead of the outage start dates identified above, ALSTOM will be allowed to avoid one (1) day of penalty in completion of the installation, for any delay attributable to ALSTOM prior to any penalty being assessed. This means that with delivery two (2) weeks ahead of the scheduled outage date, the maximum outage extension penalty will be reduced to \$900,000 and will not begin accumulating until one (1) day past the installation schedule identified within the bid.

- b. Installation Schedule and Incentives: IPSC is responsible for performing the installation Work and nothing in the Purchase Order shall be construed to create a liability of the Seller for the Work rate or quality of Work performed by the labor force responsible for installing the Goods. However, in the event of a delay in the scheduled installation duration of the Goods which is demonstrably attributable to:

- b 2M A defect in design, manufacture, or workmanship of the Goods and, provided IPSC has promptly notified ALSTOM in writing and diligently implemented ALSTOM's recommendations to overcome such delay, then ALSTOM shall pay

DIVISION D1

SPECIAL CONDITIONS

5 liquidated damages for delay in scheduled installation duration of the Goods in accordance with the following:

5th For each day that the outage length is extended, beyond that detailed in the attached "28-day Outage Schedule," ALSTOM shall pay liquidated damages of \$100,000. The maximum liquidated damages for outage extension shall be ten (10) days or \$1,000,000.

84 For each complete MW shortfall (and pro rata for each portion thereof) in HP shaft power (corrected for actual operating conditions) below the guaranteed figure, attributed to shortfall in flow below 6.9 Mlb/h, ALSTOM shall pay \$250,000. A testing tolerance equal to the mutually agreed measurement uncertainty shall be applied to the measured HP shaft power (corrected for actual operating conditions), taking into full consideration the calibration and inspection status of the feedwater flow nozzle and other test instrumentation prior to assessing liquidated damages.

94 Should IPSC decide to substitute the HP shaft power guarantee with an HP swallowing capacity guarantee, then for each complete 0.1 percent main steam flow shortfall below 6.9 Mlb/h (corrected for actual operating conditions) ALSTOM shall pay \$75,000. A testing tolerance equal to the mutually agreed measurement uncertainty shall be applied to the measured HP capacity (corrected for actual operating conditions), taking into full consideration the calibration and inspection status of the feedwater flow nozzle and other test instrumentation prior to assessing liquidated damages.

104 If the turbine section is delivered late and IPSC elects to proceed with installation of the new HP turbine, no outage extension penalty shall be assessed unless and until the ALSTOM's bid installation schedule is exceeded.

9. Force Majeure: ALSTOM shall be entitled to an equitable extension of time in the event of a delay beyond its reasonable control (including without limitation acts of God, civil insurrection, acts of government or governmental agencies, trade embargo, strikes or industrial disputes of a political motivated or regional nature or which impede movement of Goods) providing such delay occurs without the fault or negligence of ALSTOM.

10. Risk of Loss or Damage: ALSTOM shall have full risk of loss or damage to Work at all times prior to its delivery to the IPSC jobsite for off-loading from ALSTOM's carrier by IPSC. IPSC will assume all risk of loss or damage to the Work during off-loading and at all times thereafter, provided, that during any period that ALSTOM shall have sole care custody and control of the Work, ALSTOM shall assume risk of loss or damage to the Work, subject to its Limitations of Liability hereunder.

11. Existing Conditions: It is understood and agreed by the parties that nothing herein shall be interpreted as placing any responsibility or liability on: